

MAY 16 2006

**FEDERAL ELECTION COMMISSION**  
**999 E Street, N.W.**  
**Washington, D.C. 20463**

FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2006 MAY 16 P 12:38

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

MURs: 5550 and 5566  
EXPIRATION OF SOL: September 22, 2009

**MUR 5550**

COMPLAINANT: David T. Hardy

RESPONDENTS: Michael Moore; Syracuse University; the University of Cincinnati; Wayne State University; Northwest Missouri State University; the University of Florida; the Pennsylvania State University; Lehigh University; Herring Broadcasting Company, Inc. and the "Wealth TV" Network

DATE COMPLAINT FILED: September 29, 2004

DATES OF NOTIFICATION: October 6, 2004, November 22, 2004,  
November 23, 2004, September 20, 2005

DATE ACTIVATED: August 23, 2005

**MUR 5566**

COMPLAINANT: Jon Alvarez

RESPONDENT: Syracuse University

DATE COMPLAINT FILED: October 13, 2004

DATE OF NOTIFICATION: October 20, 2004

DATE ACTIVATED: August 23, 2005

RELEVANT STATUTES: 2 U.S.C. § 431  
2 U.S.C. § 441a  
2 U.S.C. § 441b  
  
11 C.F.R. § 100.52  
11 C.F.R. § 109.20  
11 C.F.R. § 109.21  
11 C.F.R. § 110.12  
11 C.F.R. § 114.4

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

**I. INTRODUCTION**

MURs 5550 and 5566 involve allegations that expenditures made in connection with a series of speeches given by filmmaker and author Michael Moore on various university campuses in September and October 2004 violated the Federal Election Campaign Act of 1971, as amended (the "Act") due to the inclusion of some express advocacy in favor of John Kerry's candidacy for President. In MUR 5550, the Complaint and Supplement allege that various universities, including Syracuse University, the University of Cincinnati, Wayne State University, Northwest Missouri State University, the University of Florida, the Pennsylvania State University and Lehigh University (hereinafter, the "university respondents") violated the ban against corporate expenditures by funding speeches by Moore. The supplement to the Complaint in MUR 5550 also alleges that Herring Broadcasting Company, Inc., which operates WealthTV, made corporate expenditures to underwrite a speech by Moore after officials at California State University San Marcos backed out of sponsoring the speech. In MUR 5566, the Complaint alleges that Syracuse University made prohibited corporate expenditures by sponsoring a speech by Moore who reportedly urged the audience at Syracuse to vote for John Kerry.<sup>1</sup>

Mr. Moore, who received speaking fees for his appearances and was often reimbursed for his expenses in connection with the speaking tour, did not fund the costs associated with these speeches. Thus, it would be appropriate for the Commission to find no reason to believe that

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<sup>1</sup> The complainant in MUR 5566 also alleges that Moore gave tangible goods in exchange for votes. Press accounts of the Moore speech at Syracuse indicate that Moore gave underwear and ramen noodles to random members of the audience. This conduct does not describe a violation of the Act that is within the Commission's jurisdiction.

1 Moore violated the Act. It also appears that the university respondents made disbursements in  
2 connection with Mr. Moore's appearances and otherwise made their facilities available to Moore  
3 without endorsing the opinions expressed by Moore. Given the particular circumstances and  
4 nature of the university respondents, this Office recommends that the Commission dismiss the  
5 allegations as to both the university and corporate respondents.

## 6 II. FACTUAL AND LEGAL ANALYSIS

### 7 A. Facts

#### 8 1. Michael Moore

9 Michael Moore is a noted documentary filmmaker, best-selling author and prominent  
10 speaker and commentator. Moore's documentaries include *Roger & Me*, *Bowling for*  
11 *Columbine*, and *Fahrenheit 9/11*. Mr. Moore's most recent film at the time of his speaking tour  
12 was *Fahrenheit 9/11*, a film critical of the Bush administration. This film, which was in  
13 distribution at the time of the speaking tour, has grossed nearly \$120 million in the United States  
14 and over \$220 million overseas and generated at least two rebuttal films, *Celsius 41.11* and  
15 *FahrenHYPE 9/11*. Moore has previously been named as a respondent in several complaints  
16 before the Commission. See MUR 5467 (Michael Moore), MUR 5474 (Dog Eat Dog Films,  
17 Inc.), MUR 5501 (Tides Foundation) and MUR 5539 (Fahrenheit 9/11). Speeches by Moore are  
18 booked through Greater Talent Network ("GTN").<sup>2</sup>

19 During September and October 2004, Moore embarked on a 20-state, 60-city, self-  
20 proclaimed "Slacker Uprising Tour" through presidential battleground states. Moore received  
21 speaking fees ranging from \$8,000 to \$50,000 for his appearances, along with proceeds from  
22 ticket sales and reimbursement for his expenses. Moore's announcement of the speaking tour on

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<sup>2</sup> GTN's biography of Moore described his interests as "reading, gardening, and removing George W. Bush from the White House." *Michael Moore*, at <http://www.greatertalent.com/biography.php?id=232> (visited on Sept. 26, 2005).

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1 his website encouraged people to see his documentary film, *Fahrenheit 9/11*, in theaters or  
2 through the purchase of the DVD and home video release of the film.<sup>3</sup> In announcing the tour,  
3 Moore indicated that he would “go to every battleground state in the country and do whatever it  
4 takes to get out the vote” and also ask voters “as the collective landlord of a public housing  
5 project at 1600 Pennsylvania Ave., take just a few minutes to evict the tenant who is currently  
6 wrecking the place . . . .” *Michael Moore On Tour; Slackers of the World, Unite!*, at  
7 <http://www.michaelmoore.com/words/message/index.php?messageDate=2004-09-25> (visited on Sept. 26,  
8 2005). Moore was not a candidate for any federal office.

9           2. Incorporated University Respondents

10           Of the seven university respondents, two university respondents, Syracuse University  
11 (“Syracuse”) and Lehigh University (“Lehigh”) are incorporated private educational institutions  
12 that provided funding for Moore’s on-campus appearances using university funds. Moore spoke  
13 at the Carrier Dome at Syracuse on September 22, 2004 and at the Stabler Arena at Lehigh on  
14 October 29, 2004. Both Syracuse and Lehigh contracted for Moore’s services through Moore’s  
15 agency, GTN.

16           a. Syracuse University

17           Syracuse paid Moore \$47,000 to speak on “the role of humor in social change” as part of  
18 the Syracuse Symposium on Humor hosted by the College of Liberal Arts and Sciences.  
19 Moore’s visit to Syracuse occurred before the start of his Slacker Uprising Tour and was co-  
20 sponsored by the Syracuse Symposium and the University Union Speakers Board. Other  
21 speakers at the Humor Symposium included “Doonesbury” creator Garry Trudeau, the Capital  
22 Steps political satire group, writer and satirist P.J. O’Rourke, stand-up comic Shazia Mirza,

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<sup>3</sup> Moore’s standard speaker contract required that the sponsor allow sales of his books and movies at each event.

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1 actress and performer Anna Deaverè Smith, University of Chicago philosophy professor Ted  
2 Cohen and New Yorker cartoon editor Bob Mankoff. *See* Syracuse Response at 3. Press  
3 accounts of Moore's speech at Syracuse indicate that Moore emphasized the importance of  
4 voting and urged the audience to vote for Kerry and take up the cause of defeating Bush. *See*,  
5 *e.g.*, Pam Greene, *Love or Hate Him, They Came to See Him*, The Post-Standard, Sept. 23, 2004;  
6 William Kates, *Moore Brings Political Perspective to Syracuse University*, Associated Press,  
7 Sept. 23, 2004.

8 b. Lehigh University

9 Moore spoke at Lehigh on October 29, 2004 at the invitation of the Visiting Lectures  
10 Committee ("VLC") which contracted with GTN for Moore's appearance. The contract  
11 provided for \$25,000 in compensation to Moore to be derived from ticket sales. VLC used  
12 \$8,000 in university funds to cover the costs of the arena, university police and lighting and  
13 sound for the event. Lehigh Response at 2. Moore reportedly spent much of his speech mocking  
14 Bush. *See, e.g.*, Kevin Pentn, *Michael Moore Taking Anti-Bush Tour to Lehigh University*,  
15 Morning Call, Oct. 6, 2004, at B7; Genevieve Marshall, *Moore Yells in Lehigh Speech: "4 more*  
16 *days!*," Morning Call, Oct. 30, 2004, at A3.

17 Press accounts indicate that the student activities board worked with College Republicans  
18 to identify a conservative speaker to provide a countervailing view. Lehigh actually invited the  
19 complainant in MUR 5550<sup>4</sup> to appear on campus at Lehigh on October 28, 2004, the day before  
20 the event. The Moore event itself included a table for the College Republicans. *Id.* at 2-3.

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<sup>4</sup> Mr. Hardy, the complainant in MUR 5550, is the co-author of a book entitled "Michael Moore is a Big Fat Stupid White Man."

1                   3. Public University Respondents

2           The five public university respondents, the University of Florida ("Florida"), the  
3   Pennsylvania State University ("Penn State"), the University of Cincinnati ("Cincinnati"),  
4   Northwest Missouri State University ("NMSU") and Wayne State University ("Wayne State"),  
5   did not use university funds to directly sponsor Moore's speeches, but did make university  
6   facilities available to Moore, and in some cases, Moore's speaking fees came from student fees.

7                   a. The University of Florida

8           Moore spoke at Florida on October 4, 2004 at the invitation of Florida's student-funded  
9   speakers' program, ACCENT, which contracted with Moore through GTN, paying more than  
10   \$50,000 for a program entitled "An Evening with Michael Moore." Florida Response at 3. A  
11   press release and advertising brochure for the event distributed by ACCENT promoted Moore as  
12   an Oscar-winning documentarian and best-selling author and as "one of the nation's funniest,  
13   most refreshing political voices." Under university policy, no banners or placards were  
14   permitted inside the center where Moore's speech was held.<sup>5</sup> Additionally, university approval  
15   was required for distribution of any printed materials in the center and demonstrations were  
16   prohibited. *Id.* at 4.

17           To provide a contrasting perspective to Moore, Florida officials invited New York  
18   Governor George Pataki to speak on campus around the same time as Moore's speech. *See*  
19   *Moore Campus Crawl Spurs FEC Filing, U. Florida to Respond*, Independent Florida Alligator,  
20   Jan. 4, 2005.

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<sup>5</sup> During Moore's speech, University police removed two students who displayed signs supporting Ralph Nader and ordered a group selling Democratic dog tags inside the entrance of the arena to desist in the activity. Florida Response at 4.

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1                                   b. Northwest Missouri State University

2           Moore spoke at NMSU on October 9, 2004 at the invitation of the Young Democrats, a  
3 student organization. Moore did not receive a fee for speaking at NMSU but did receive the  
4 proceeds from ticket sales. Student groups at NMSU are not charged for use of campus  
5 facilities, and the Young Democrats used NMSU facilities for the Moore speech at no charge.  
6 The Young Democrats also used the NMSU ticketing system and were required to pay for  
7 additional security staff expenses to cover security for the event. The NMSU press release  
8 announcing the Moore speech noted that University funds would not be used in connection with  
9 the Moore speech. NMSU also worked with the Young Republicans to identify a speaker who  
10 would represent a view contrary to Moore's but was unsuccessful. NMSU Response at 1-2.

11                                   c. The Pennsylvania State University

12           Moore spoke on the campus of Penn State on October 22, 2004 at the invitation of the  
13 Penn State College Democrats, which received funding for the event from the University Park  
14 Allocation Committee ("UPAC"). UPAC allocates student activities fees through its  
15 subcommittee, the Programming Allocation Team ("PAT"). On May 17, 2004, the College  
16 Democrats submitted a request to UPAC to fund an event described as "Michael Moore will give  
17 a speech on liberalism in the U.S. post 9/11." Penn State Response at 4. After a supplemental  
18 request, the College Democrats eventually requested a total of \$26,378 in funding from UPAC.  
19 UPAC allocated \$23,396 for Moore's \$15,000 speaking fee, as well as lodging, meals, security  
20 and venue costs, with the College Democrats raising additional funds to cover the costs of the

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1 event.<sup>6</sup> See Florida Response at 4-5; Kayur Patel, *UPAC Funds Bulk of Michael Moore Speech*,  
2 Daily Collegian, Oct. 1, 2004

3 Press accounts of Moore's speech described the event as "an anti-Republican pep rally"  
4 and noted that Moore encouraged the students to vote for Kerry and help defeat Bush. See, e.g.,  
5 Gisela Garcia, *Moore Encourages Younger Generation to Help Defeat Bush*, Centre Daily, Oct.  
6 24, 2004; Alex Muller & James Durgin, *Moore Criticizes Current President at Penn State*, Daily  
7 Collegian, Oct. 25, 2004.

8 The same day Moore appeared on the Penn State campus, Michael Gallagher, a  
9 conservative talk radio host and critic of Moore's, also spoke on the Penn State campus and  
10 premiered his film, *FarenHYPE 9/11*. See Lesley O'Connor, *Packed Crowd Gets First Look at*  
11 *Gallagher's Film*, The Digital Collegian, Oct. 25, 2004. Also on October 29, 2004, President  
12 Bush appeared on campus at the invitation of the Penn State College Republicans. Penn State  
13 Response at 5.

14 d. The University of Cincinnati

15 Moore visited Cincinnati on October 27, 2004 at the invitation of the Programs &  
16 Activities Council, the Racial Awareness Program, the Undergraduate Funding Board and  
17 Latinos En Accion. Cincinnati Response at 2. Funding for the groups is derived from student  
18 fees. The groups contracted for Moore's appearance through GTN, paying an \$8,000 speaking  
19 fee. *Id.* Press reports indicate that Moore appeared with the band REM and a group of former  
20 diplomats, urging voters to vote Bush out of office; that Michael Stipe of REM sported a  
21 Veterans for Kerry pin at the event; and that Bush supporters in the audience carried signs and

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<sup>6</sup> The College Democrats reportedly raised the remainder of the \$4,000 through private donations, including \$1,000 from donations of Kerry-Edwards campaign items and from Centre County Democrats, who kept an envelope in their office asking for donations for the event. See Patel, *UPAC Funds Bulk of Michael Moore Speech*, Daily Collegian, Oct. 1, 2004.

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1 heckled Moore from the crowd. *See, e.g., Joshua Rinaldi, Michael Moore Visits Cincinnati,*  
2 *Ohio, The News Record, Oct. 29, 2004; Denise Smith Amos, Filmmaker Moore Brings Anti-*  
3 *GOP Show to Town, Enquirer, Oct. 28, 2004.*

4 The Moore event was held in an outdoor public venue and was open to anyone who  
5 wanted to attend. Supplement to Cincinnati Response at 2. After Moore's visit, the Programs  
6 and Activities Council showed a screening of *FahrenHYPE 9/11*, a rebuttal to Moore's  
7 documentary *Fahrenheit 9/11*.

8 e. Wayne State University

9 Moore spoke on the campus of Wayne State on September 29, 2004 at the invitation of  
10 the WSU College Democrats, a student group. The speech was sponsored by the College  
11 Democrats and a local labor organization. Neither Wayne State nor the College Democrats paid  
12 a speaking fee for Moore's appearance. Since Moore's speech occurred in an open mall on the  
13 university campus, there were no costs for hall rental associated with the speech. Wayne State  
14 Response at 1-2. A press account of Moore's speech mentioned the presence of voter registrars  
15 and volunteers for MoveOn.org and quoted Moore as stating, "Our goal is to remove George W.  
16 Bush from the White House." Martha Wood, *Moore Spouts Anti-Bush Rhetoric, Urges Action,*  
17 *The South End, Sept. 30, 2004.*

18 4. Corporate Respondents

19 Herring Broadcasting Company, Inc. ("Herring") is a corporation registered in the State  
20 of California with an office in San Diego. Robert Herring, Sr. is the President and Chief  
21 Executive Officer of Herring. Herring operates WealthTV, a cable television broadcasting  
22 station providing high definition lifestyle programming aimed at high-income consumers.

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1 Moore was scheduled to speak on the campus of Cal State San Marcos until university  
2 officials withdrew funding for the event citing concerns about using state funds to sponsor what  
3 might be viewed as a political event. *See* Karen Haynes, *Michael Moore Controversy: An Issue*  
4 *of Balance*, Cal State San Marcos Tracks, Sept. 20, 2004; Lisa Petrillo, *CSU San Marcos*  
5 *President Cancels Appearance by Filmmaker Moore*, San Diego Union-Tribune, Sept. 15, 2004  
6 at B-4. After university officials withdrew support for Moore's appearance on campus, students  
7 raised more than \$40,000 to fund the event, which was moved to a location off campus. *See* Lisa  
8 Petrillo, *CSU San Marcos President Says Michael Moore Visit Would Be Illegal*, San Diego  
9 Union Tribune, Sept. 22, 2004.

10 On September 24, 2004, Herring gave \$15,000 to Associated Students, Inc. for the  
11 "Michael Moore event." Herring Response at 2. Associated Students, Inc. is an officially-  
12 recognized student organization at California State University San Marcos ("Cal State San  
13 Marcos"). Commenting on the company's \$15,000 donation to underwrite the event, Herring  
14 official Chris Moore stated, "It didn't matter whether it was for (conservative) Bill O'Reilly or  
15 Michael Moore, we wanted to help the students bring someone who provokes and promotes  
16 political debate." *See id.* Moore spoke to Cal State San Marcos students and the general public  
17 at the Del Mar Fairgrounds on October 12, 2004. *See Moore Speaks at Cal State*, Union County  
18 Advocate, Oct. 20, 2004.

19 **B. Analysis**

20 The Complaint in MUR 5550 alleges that Mr. Moore's speeches constitute "stump  
21 speeches" expressly advocating the election of Senator John Kerry and the defeat of President  
22 George Bush. The Complaint in MUR 5566 makes similar allegations with respect to Moore's  
23 speech at Syracuse University. Both MURs allege that the university respondents made

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1 prohibited corporate expenditures by funding speeches by Moore. MUR 5550 further alleges  
2 that Herring Broadcasting, Inc. and WealthTV made prohibited corporate expenditures in  
3 support of a speech by Moore.

4 Complainants' theory is that the expenditures by educational institutions for the Moore  
5 appearances constitute either in-kind contributions to the Kerry campaign or possibly  
6 independent expenditures. The available information does not support either theory. As  
7 discussed below, there is no evidence to suggest that Moore's appearances were coordinated with  
8 the Democratic Party or the Kerry campaign. It also appears that the speaking tour did not entail  
9 any independent expenditures on the part of Moore. While there may have been incidental  
10 express advocacy in portions of Moore's extemporaneous remarks to the audience at these  
11 events, it does not appear that the university respondents themselves engaged in, adopted or  
12 endorsed any express advocacy of Mr. Kerry's candidacy. Herring Broadcasting, Inc. provided  
13 a corporate subsidy for Mr. Moore's appearance after the university host withdrew funding citing  
14 concerns about the partisan political content of the event. Given the circumstances surrounding  
15 the university events and Herring's subsidy of the canceled university event, this Office does not  
16 believe additional investigation of these matters warrants further expenditure of the  
17 Commission's limited resources.

18 1. Michael Moore

19 The available information does not indicate that Moore made any expenditures to support  
20 his appearances on the campuses of the university respondents. Instead, in addition to  
21 reimbursement of his expenses, Moore received at least \$145,000 from speaking fees and

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1 proceeds from ticket sales for his speeches on the campuses of the various university  
2 respondents.<sup>7</sup> Thus, Moore's activities do not appear to qualify as independent expenditures.

3 Because it does not appear that Moore made any personal expenditures to support the  
4 speaking tour and the proceeds from the tour were not provided to any federal candidate or  
5 committee, any potential liability for Moore would have to be based on a finding that Moore  
6 coordinated his activities with either the Democratic Party or the Kerry-Edwards campaign. The  
7 complainant in MUR 5550 alleged that Moore's activities were coordinated with the Democratic  
8 Party, pointing only to an article in the Penn State student newspaper which noted that private  
9 donations for Moore's appearance at Penn-State included \$1,000 from donations of Kerry-  
10 Edwards campaign items and that Centre County Democrats kept an envelope in their office  
11 asking for donations for the event. *See Kayur Patel, UPAC Funds Bulk of Michael Moore*  
12 *Speech*, Daily Collegian, Oct. 1, 2004. This information is insufficient to warrant investigation  
13 into coordination. *See* MUR 5183 (Rev. Jesse Jackson).

14 Given the fact that proceeds from the tour were not provided to any federal candidate or  
15 committee, and lacking any evidence of coordination with the Democratic Party or the Kerry-  
16 Edwards campaign, this Office recommends that the Commission find no reason to believe that  
17 Michael Moore violated the Act or regulations.

## 18 2. University Respondents

19 The complaints allege that the university respondents violated the ban on corporate  
20 expenditures by funding speeches made by Moore that included express advocacy of John  
21 Kerry's candidacy for President. The Act prohibits corporations from making contributions or

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<sup>7</sup> Moore received a speaking fee of \$47,000 for his appearance at Syracuse, \$50,000 for Florida, \$15,000 for Penn State and \$8,000 for Cincinnati, along with \$25,000 from the proceeds of ticket sales for his speech at Lehigh and proceeds from the tickets sales for his appearance at NMSU. The university respondents constitute only seven of the more than fifty scheduled appearances by Moore at universities and other venues from September through October 2004.

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1 expenditures in connection with any election. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2. While  
2 incorporated educational institutions such as Syracuse and Lehigh are subject to the prohibition  
3 on corporate contributions or expenditures, unincorporated educational institutions, including the  
4 public universities that are respondents in this matter, are subject to limits on contributions to  
5 Federal candidates. *See* 2 U.S.C. § 431(11) (defining “person” as “an individual, partnership,  
6 committee, association, corporation, labor organization, or any other organization or group of  
7 persons”) and MUR 5392 (Clark for President) (treating educational institutions as “persons”  
8 under the Act).

9       The narrow exemption to the definition of “contribution or expenditure” for appearances  
10 on educational institutions at 11 C.F.R. §§ 110.12 and 114.4(c)(7) does not apply here as this  
11 exemption explicitly applies only to *candidate* appearances hosted by, and on the premises of,  
12 educational institutions such as schools, colleges, and universities, and only under certain  
13 circumstances.<sup>8</sup> Nonetheless, some of the policy considerations that led to the creation of this  
14 exemption, including ensuring that the Act did not unduly burden the free exchange and debate  
15 of ideas in an academic environment, are also relevant to a consideration of the university  
16 respondents. *See* Explanation and Justification, Corporate and Labor Organization Activity;

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<sup>8</sup> Commission regulations allow both public educational institutions and incorporated nonprofit educational institutions to sponsor candidate appearances on campus under certain circumstances without being considered a “contribution or expenditure” under the Act. *See* 11 C.F.R. §§ 110.12, 114.4(c)(7). An educational institution may rent its facilities to a candidate at the “usual and normal charge.” 11 C.F.R. §§ 110.12(a), 114.4(c)(7)(i). Educational institutions may also offer their facilities to candidates, representatives of candidates or representatives of political parties at no charge or a reduced charge if: (1) The educational institution makes reasonable efforts to ensure that the appearances constitute speeches, question and answer sessions, or similar communications in an academic setting, and makes reasonable efforts to ensure that the appearances are not conducted as campaign rallies or events; and (2) The educational institution does not, in conjunction with the appearance, expressly advocate the election or defeat of any clearly identified candidate(s) or candidates of a clearly identified political party and does not favor any one candidate or political party over any other in allowing such appearances. 11 C.F.R. §§ 110.12(b), 114.4(c)(7)(ii). Although there are indications that most, if not all, of the universities made reasonable efforts to ensure that Moore’s appearances took place in an academic setting, not as campaign rallies or events, a detailed analysis of whether the university respondents complied with the provisions relating to candidate appearances at educational institutions is not called for because Moore was not a candidate for any federal office or a representative of any candidate for federal office or representative of any political party.

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Express Advocacy and Coordination With Candidates, 60 Fed. Reg. 64260, 64270-71  
(December 14, 1995).

Universities have historically sought to promote the exchange and debate of ideas by supporting speech on campus. Inviting speakers on matters of public interest is a means for universities to expose students to a variety of viewpoints, including differing political viewpoints. The available evidence suggests that invitations for Moore to speak on campus appear to have been based on his reputation as a provocative filmmaker, author, social commentator and political humorist. Rather than reflecting political support by the university, Moore's appearance on the campuses of the university respondents in the months preceding a national election is consistent with the long-standing tradition of universities serving as a forum for the expression of differing political viewpoints. Although the fact that many of the universities invited speakers with differing viewpoints is not essential to our recommendation, the presence of these speakers is consistent with the universities' apparent purpose of fostering the free exchange of ideas in an academic setting. Accordingly, this Office recommends that the Commission dismiss the allegations that the university respondents violated the Act in connection with the Michael Moore appearances. *See Heckler v. Cheney*, 470 U.S. 821 (1985).

### 3. Corporate Sponsorship

Corporations are prohibited from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for Federal office. *See* 2 U.S.C. § 441b(a), 11 C.F.R. § 114.2. Herring made a contribution to Associated Students, Inc. for the purpose of underwriting Michael Moore's October 12, 2004 speech, which Cal State San Marcos refused to fund due to concerns about the expected partisan political content of the speech.

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1 Herring decided to provide funding for the Moore speech after the university withdrew  
2 funding. It does not appear that the decision was related to the corporation's normal course of  
3 business; rather, Herring officials indicated that they sponsored Moore's speech in order to  
4 promote political debate. On the other hand, given the perceived appearance of political  
5 partisanship, which caused the university to cancel Moore's appearance in the first instance, it is  
6 also possible that Herring provided its support for partisan political purposes.

7 Regardless of Herring's motivation, given the totality of the circumstances, this Office  
8 recommends that the Commission dismiss the allegations in MUR 5550 as to Herring. The  
9 contribution by Herring was not made directly to Moore or to any federal candidate or  
10 committee, but to Associated Students, Inc., the student organization at Cal State San Marcos  
11 that sponsored the Moore speech. Furthermore, the expenditure by Herring was made only after  
12 the university withdrew funding for the event. If Cal State San Marcos had provided funding or  
13 campus facilities for the event, as was the original plan for Moore's speech, the university would  
14 likely have been in the same position as the other university respondents. Given the inherent  
15 difficulties in establishing the "purpose" for the expenditure in the unusual factual context of this  
16 matter, and considering the fact that the allegations as to Herring are peripheral to a  
17 consideration of larger issues, we do not believe that this allegation warrants additional  
18 expenditures of the Commission's limited resources. *See Heckler v. Cheney*, 470 U.S. 821  
19 (1985).

### 20 **III. RECOMMENDATIONS**

#### 21 **A. In MUR 5550**

- 22 1. Find no reason to believe Michael Moore violated the Act in connection with the  
23 Complaint filed in MUR 5550.  
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2. Dismiss the allegations in MUR 5550 with respect to Syracuse University, the University of Cincinnati, Wayne State University, Northwest Missouri State University, the University of Florida, the Pennsylvania State University and Lehigh University.
3. Dismiss the allegations in MUR 5550 with respect to Herring Broadcasting Company, Inc. and WealthTV.
4. Approve the appropriate letters.
5. Close the file.

**B. In MUR 5566**

1. Dismiss the allegations in MUR 5566 with respect to Syracuse University.
2. Approve the appropriate letter.
3. Close the file.

5/15/06  
Date

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